

Claimant contends Judge Frobish erred. Claimant argues that her medical expert witness, Dr. Daniel D. Zimmerman, had the most credible opinion of claimant's functional impairment and, therefore, her permanent partial general disability should be increased to 21 percent.

Conversely, respondent and its insurance carrier contend the Award should be affirmed. They argue that the greater weight of the evidence indicates that claimant had a three percent whole body functional impairment before the October 1998 accident and a five percent whole body functional impairment after the accident. They also argue that the expert medical opinions from Dr. Michael H. Munhall, who was claimant's treating physician, and from Dr. Philip R. Mills, who examined claimant at the Judge's request, are more credible than those from claimant's medical expert.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

1. The parties agree that on October 22, 1998, claimant sustained personal injury by accident arising out of and in the course of employment with respondent. On that date claimant experienced back pain when a coworker pushed on claimant's shoulders while claimant was bending over.
2. During litigation of the claim, the Judge appointed Dr. Philip R. Mills as an independent medical examiner to evaluate claimant's injuries and determine the functional impairment rating. Dr. Mills determined that claimant had a three percent whole body functional impairment before the October 22, 1998 work-related accident and a five percent whole body functional impairment after the accident. The Board adopts Dr. Mills' opinions as its findings in this claim. The Board is mindful that Dr. Michael H. Munhall testified that claimant sustained no additional impairment in the accident and that Dr. Daniel D. Zimmerman testified that claimant's whole body functional impairment was 21 percent. Nonetheless, the Board finds that Dr. Mills was an unbiased witness and that his opinions were credible and persuasive. Further, Dr. Mills' functional impairment analysis complies with the *AMA Guides to the Evaluation of Permanent Impairment*, but the Board is not convinced that Dr. Zimmerman correctly followed those guides as is required by statute.¹

AWARD

WHEREFORE, the Board affirms the June 15, 2000 Award entered by Judge Frobish.

IT IS SO ORDERED.

¹ See K.S.A. 1998 Supp. 44-510e.

Dated this ____ day of January 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Randy S. Stalcup, Wichita, KS
Ronald J. Laskowski, Topeka, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director